

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/507,108 02/17/00 SWENSON

M 54682 USA 6A

EXAMINER

QM32/1012

Muetting Raasch & Gebhardt PA  
PO Box 581415  
Minneapolis MN 55458

LEWIS, K

ART UNIT	PAPER NUMBER
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3761

DATE MAILED:

10/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/507,108</b>	Applicant(s) <b>Swenson</b>	
	Examiner <b>Kim M. Lewis</b>	Art Unit <b>3761</b>	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.			
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.			
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.			
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).			
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>7/3/00, 10/10/00 and 1/9/01</u>			
2a) <input type="checkbox"/> This action is FINAL.		2b) <input checked="" type="checkbox"/> This action is non-final.	
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-35</u> is/are pending in the application.			
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1-35</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>Jul 3, 2000</u> is/are objected to by the Examiner.			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. § 119</b>			
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).			
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
*See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).			
<b>Attachment(s)</b>			
15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>4, 6, 7</u>		20) <input checked="" type="checkbox"/> Other: <i>Detailed Action</i>	

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendment filed on 2/17/00 has been received and made of record in the application file wrapper. The changes to the specification have been made as requested.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 7/3/00, 10/10/01 AND 1/9/01 have been received and made of record in the application file wrapper.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "19" (see page 8, line 13 of the specification). Correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9, 11-16, 18, 19, 22-27, 29-32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,409,472 ("Rawlings et al.").

As regards claim 1, Rawlings et al. disclose an adhesive polymeric foam dressing comprising a liquid impervious water vapor permeable film material (col. 12, lines 64-65 and col. 8, lines 65-66) having directly bonded thereto an absorbent foam. Rawlings et al. further disclose apt foams constructed from "polyurethane, carboxylated butadiene styrene rubber, polyacrylate or like foam. Such foams may be made of hydrophilic materials *per se* or may be treated to render them hydrophilic, for example, with surfactants", (col. 6, line 58-67). Similarly, the applicant on page 6, lines 24+ disclose the same absorbent foams. As such, the foams of Rawlings et al. perform the same (*i.e.* nonswellable).

As regards claims 2-9, 24-27 and 29, the applicant fails to disclose in both the specification and claims anything that would chemically or physically alter the disclosed absorbent foam and polymeric film. As such, the examiner contends that since the same materials are used in constructing the medical article of the instant and in the wound dressing of Rawlings et al., the wound dressing of Rawlings et al. has similar wet and dry MVTRs, would absorb similar amounts of NaCl, and would have similar increases in volume.

As regards claim 11, note col. 9, lines 5-20, which discloses the permeability of the film.

As regards claim 12, note col. 9, lines 47-48, which discloses the thickness of the film.

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As regards claims 13 and 14, since the materials used in Rawlings et al. are the same and the applicant fails to claim anything that would chemically or physically alter the absorbent foam, the examiner contends the foam has the same characteristics.

As regards claims 15 and 16, note col. 6, lines 42-47 and lines 58-59, which discloses the type of foam used.

As regards claims 18 and 19, note Fig. 1, which discloses the film extends beyond the periphery of the foam and an adhesive therearound.

As regards claim 22, note col. 12, lines 38-45, which discloses how the foam is adhered to the film.

As regards claim 23, note the abstract, which discloses the device is a wound dressing.

As regards claim 30, note the rejection of claim 1, *supra*.

As regards claims 31 and 32, note Fig. 1, which discloses the film extends beyond the periphery and an adhesive material therearound.

As regards claim 34, note the rejection of claim 22.

As regards claim 35, note the Abstract, which discloses the device of Rawlings et al. is a wound dressing.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10, 17, 20, 21, 28 and 33 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Rawlings et al. In view of U.S. Patent No. 5,000,172 ("Ward").

As regards claims 10, 20, 28 and 33, Rawlings et al. fail to disclose that the film layer comprises one or more layers. However, Ward teaches it is known to construct backing layers (film layers) with additional film layers (nonwoven) for support. It would have been obvious to one having ordinary skill in the art to modify Rawlings et al. by constructing the film layer from one or more layers for additional support, as suggested by Ward.

As regards claim 17, Rawlings et al. fail to disclose graphics on the film material. However, Ward teaches it is known to provide graphics on the film layer of a bandage in order to monitor the size of a wound. It would have been obvious to one having ordinary skill in the art to modify Rawlings et al. with the addition of graphics on the film layer, as suggested by Ward, in order to monitor the size of a wound.

As regards claim 21, Ward discloses that the additional layer is adhesively bonded to the backing layer. Ward fails to teach the adhesive used is a fibrous adhesive. Absent a critical teaching and/or a showing of unexpected results derived from the use of a fibrous adhesive, the examiner contend that the type of adhesive used is an obvious design choice which does not patentably distinguish applicant's invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (703) 308-1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

kml  
October 5, 2001



KIM M. LEWIS  
PRIMARY EXAMINER